

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 45-003-13-1-5-00302-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-19-101-020.000-003
Assessment Year: 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Nowacki contested the 2013 assessment of his property located at 4520 W. 30th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued a determination valuing the vacant residential lot at \$3,400.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On July 8, 2019, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”), held a hearing on Nowacki’s petition. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by its Hearing Officers Robert Metz and Joseph E. James. They were all sworn as witnesses.

RECORD

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit A: Property record card for 2008-2013
 - Petitioner Exhibit B: Property record card for 2014-2018
 - Petitioner Exhibit C: GIS map of the subject parcel

The record for this matter also includes (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessing official’s determination has the

burden of proof. Ind. Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year’s assessment, or where it is above the level determined in a taxpayer’s successful appeal of the prior year’s assessment. I.C. § 6-1.1-15-17.2(b) and (d).

6. The property’s value remained unchanged from 2012 to 2013. Nowacki therefore bears the burden of proof.

SUMMARY OF CONTENTIONS

7. Nowacki’s case:
 - a. Nowacki contends this lot is indistinguishable from the property in a previous hearing located at 4514 W. 30th Place. He argues the assessments for these properties should be identical. Both properties are in the same subdivision where there is little potential for development. They have the same accessibility or lack thereof. Neither property has paved roads or utilities. There is no reason for this property’s assessment to be \$3,400, while 4514 W. 30th Place was reduced to \$2,100. *Nowacki testimony; Pet’r Ex. C.*
 - b. When he first appealed the assessment, he valued the property at \$2,500. Values in the city have actually declined since then. This is due in part to the over-assessment of property driving more owners and buyers out of the city and creating an ever-weakening market for these properties. *Nowacki testimony.*
8. The Assessor’s case:
 - a. The Assessor contends the subject property is accessible, while 4514 W. 30th Place is not. Therefore, 4514 W. 30th has a higher negative influence factor applied to the land. The Assessor recommends no change to the assessment. *James testimony.*

ANALYSIS

9. Nowacki failed to make a prima facie case for reducing the property’s 2013 assessment. The Board reached this decision for the following reasons:
 - a. The goal of Indiana’s real property assessment system is to arrive at an assessment reflecting the property’s true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. “True tax value” does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines “true tax value” as “market value in use,” which it in turn defines as “[t]he market value-in-use

of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.

- b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2013, the valuation date was March 1, 2013. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the assessment should be \$2,500, but he failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. To the extent that his testimony regarding 4514 W. 30th Place was an attempt at an assessment comparison approach under Indiana Code § 6-1.1-15-18, he still came up short. To effectively use an assessment comparison approach, parties must show the properties are comparable to the subject using generally accepted appraisal and assessment practices. Ind. Code § 6-1.1-15-18. To establish that properties are comparable, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Long*, 821 N.E.2d at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- e. Here, Nowacki’s evidentiary presentation was insufficient to demonstrate that the properties are truly comparable. Again, a proponent needs to give specific reasons explaining why they believe a property is comparable. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Id.* at 470. While the properties may share some similarities, Nowacki failed to discuss their characteristics in sufficient detail. And he failed to explain why it was unnecessary to make adjustments to account for differences between the properties as required by *Long*.
- f. Because Nowacki offered no probative market-based evidence to demonstrate the property’s correct market value-in-use, he failed to make a prima facie case for a lower assessment. Where a Petitioner has not supported his claim with probative

evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the subject property's 2013 assessment.

ISSUED: September 24, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.